

APPENDIX 3

Excerpts from Deposition of
Jon Ohmann

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<p>1 The witness, JON OHMANN, being first duly 2 sworn, was examined and testified as follows: 3 E X A M I N A T I O N (By Ms. Parker): 4 Q. Good morning again, Mr. Ohmann. 5 A. Good morning. 6 Q. We're going to take your deposition here in 7 Charlotte, North Carolina. I'm the assistant United 8 States Attorney assigned to this case as well as Ms. 9 Danielle Jaberg, who is with the United States 10 Department of Labor. We have Mr. David Dean here who 11 is the attorney for the Allied Pilots Association. 12 A. Okay. 13 Q. I will note that this deposition is noticed and is 14 being taken according to the federal rules. 15 (WHEREUPON, the Reporter marked the 16 document referred to as Deposition 17 Exhibit No. 11 for identification.) 18 Q. Have you ever been deposed before? 19 A. No. 20 Q. In a lot of ways, it's just like you were in court. 21 You are under oath. The penalties apply to perjury, 22 and I'm not saying you would do that, but I just have 23 to announce that. 24 A. Sure. 25 Q. You will get a chance to read the transcript before</p>	<p>1 it becomes finalized, and you can make changes to the 2 transcript if you feel like something didn't come 3 across clearly or anything of that nature. 4 A. Okay. 5 Q. I am from the south, but I spent 10 years in the East 6 Coast. So I tend to talk pretty fast. I also have a 7 tendency to ask compound questions. If there's 8 anything that I say that you don't quite understand 9 or you want me to break it down, let me know. 10 A. Okay. 11 Q. Also, we're dealing in a subject matter to which you 12 are way more familiar than I am. So if I ask you a 13 question and you think what I'm trying to ask is 14 about "X" but what I said is "Y," you can help me 15 out, but let me know that you're doing that. You 16 know, tell me, "I hear your question. If I 17 understand you and you're asking about this," then 18 answer, but don't help me out without letting me know 19 because we want to make sure we're talking about the 20 same things at all times. 21 A. Absolutely. 22 Q. If you need to take a break, we'll take a break. 23 It's a formal proceeding, but I try to do it as 24 informally as possible. So I want you comfortable 25 and all of that. No. 4, I would like to say you</p>
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<p>1 received a random phone call from me asking you if 2 you'd be willing to appear for a deposition, and you 3 said yes, and so I'd like to note here on this record 4 my appreciation of that. I could subpoena you, and 5 actually, we ultimately did, but some people would 6 have said no just to be difficult, and you said yes, 7 having never heard from me before, and I appreciate 8 it and I'd like to take the time here to say that. 9 The second thing I'd like to say is that 10 although you're here on the hot seat and I'm asking 11 you questions about this case, this case is really 12 not about you, and it's not about your company and 13 it's not about -- it's about the voting system, but 14 it's not about the voting system from your company's 15 perspective. So we should be -- I'd like to be clear 16 about that. We'll talk about the Internet, but this 17 is not about Internet voting per se, and I'm sure 18 you're more familiar than I am with, you know, the 19 whole cottage industry that has sprung up since 2000. 20 It's not our role here to address that, and it's not 21 my role here to say whether your system is a good 22 system or a bad system or works in some situations or 23 whatever. My only purpose here is to take a look at 24 that 2004 election and try to figure out whether 25 everything that happened was in accordance with the</p>	<p>1 statutes, but it's not an indictment of your system 2 in any way. So I just want us to be clear on that. 3 A. Okay. 4 Q. Now, after all of that background, I'd like to ask 5 you to state your name and spell it just for the 6 record. 7 A. My name is Jonathan, J-o-n-a-t-h-o-n, Ohmann, 8 O-h-m-a-n-n. 9 Q. Could you give us your address? 10 A. It's 2527 King Arthur Drive, and that's Monroe, 11 North Carolina, 28110. 12 Q. What's your present job title? 13 A. My present job title is director of software 14 development. 15 Q. And how long have you been in that position? 16 A. I guess it's now almost seven years. 17 Q. And your employer is? 18 A. Get-A-Geek, Incorporated. 19 Q. Is your current position the same position -- which I 20 guess it would have been -- that you held in 2004? 21 A. Uh-huh. 22 Q. Have you looked at any documents in preparation for 23 this deposition? 24 A. I have reviewed the documents which you sent me 25 for -- as a reference, which were the results of</p>

<p style="text-align: right;">Page 41</p> <p>1 happen during the election, particularly the 2 electronic elections, that do require my help with. 3 But generally speaking, we don't have a significant 4 number of problems at all with any elections, 5 regardless of what kind of elections they are in 6 the -- again, the goal is that we start it up, we let 7 it finish. The results are certified, and nobody has 8 any questions and nobody has any concerns, and there 9 aren't lawsuits and depositions to follow.</p> <p>10 Q. So you have -- if I understand how the system works, 11 you have a client who comes in and says, "This is 12 what we want. You make this happen this way," but 13 that you aren't necessarily coming back and saying, 14 "Well, you know, you want this election, and there 15 are these considerations you ought to think about," 16 and things like that. So it's not a give --</p> <p>17 A. To some extent it is. I mean, from the standpoint of 18 whose responsible for what, we don't deal with the 19 client directly at all. AAA does all of that. They 20 are the administrator of the election. All we do is 21 manage and maintain the electronic systems. But 22 because of that relationship between AAA and us from 23 a technical standpoint, we typically do a lot of 24 technical support for the system in terms of reports 25 at the end and things like that. But what the client</p>	<p style="text-align: right;">Page 42</p> <p>1 wants in terms of how they want to run the election, 2 what options they would like to, you know, have, what 3 requirements they have at the end in terms of 4 reporting, those are all garnered by the AAA, and 5 they then in turn come to us and say, "Well, this is 6 what we need. This is what the client wants," 7 whatever.</p> <p>8 Now, if something raises a red flag with 9 me, such as, you know, they want to see -- at the end 10 they want to see a breakdown of who voted by date and 11 time, and they want a list of vote by date and time, 12 I say, "You can't do that" because there are going to 13 be instances where the date and times are going to 14 match, and you're going to see who voted how. We do 15 that as sort of a service for the AAA because usually 16 they catch all of that, but from a technical 17 standpoint, that would raise a flag for me and I 18 would say, "Are you sure that's what you want to do." 19 Now, I don't have the authority to say, "I'm not 20 going to give it to you," but I do make them, "them" 21 being AAA, aware that that's a possibility, and then 22 they make the determination as to whether or not that 23 information is given to the client.</p> <p>24 Q. Now, that information that you're talking about, you 25 can generate a list of who voted and what time and</p>
<p style="text-align: right;">Page 43</p> <p>1 then a list with the times and the votes, where 2 specific votes were cast; is that correct?</p> <p>3 A. Initially, you can do that. As I say, there are some 4 cases where you can, let's say, in an hour -- it's 5 usually broke down by hour. Within that hour, let's 6 say you have one or two people vote, and the votes 7 that show the date and time have -- show the two 8 votes. So you know what -- the results, and let's 9 say, they're both no. Then you know these two people 10 have voted no. That's the kind of information that's 11 not given out. It's also the kind of information 12 that's not typically collected, either. There's a 13 date that's collected, but the time is usually not 14 unless there's a specific requirement for that. And 15 again, with a non-officer election, that may be a 16 requirement, and it's relatively easy for us to say, 17 "Okay. We can collect the time on that," and they 18 may be able to say, "Well, we want to see how people 19 voted."</p> <p>20 There was one instance that was a student 21 government election that was done for the City of 22 New York University, and their bylaws actually state 23 that they need to see who voted and how they voted. So 24 then we could give them that information. Now, 25 certainly with union elections, we can't do that.</p>	<p style="text-align: right;">Page 44</p> <p>1 Survey types of votes, that's not information that's 2 restricted. So there are cases where we do collect 3 that information, but typically, on a regular election, 4 it's not done. We collect the date. We know that you 5 voted on this date and we have a vote for that date, 6 but it's going to be in a huge pool of votes for the 7 same day.</p> <p>8 Q. Where is that information? On your computer?</p> <p>9 A. The general structure of the system in terms of --</p> <p>10 Q. Hold on one second. Before we turn the page, can I 11 have this (indicating)?</p> <p>12 A. Absolutely.</p> <p>13 MS. PARKER: Let's mark this as Deposition 14 Exhibit 1. (WHEREUPON, the Reporter marked the 15 document referred to as Deposition 16 Exhibit No. 1 for identification.)</p> <p>17 A. Our system -- and, again, I think the main majority, 18 and you can correct me if I'm wrong -- but the main 19 majority of this investigation is with the Internet 20 portion of the election.</p> <p>21 Q. That's correct.</p> <p>22 A. I think, generally speaking, that the voice response 23 portion is not too much in question. Again, there's 24 not a whole lot you can do with that, but generally</p>

<p style="text-align: right;">Page 53</p> <p>1 10:54 a.m. to 11:02 a.m.)</p> <p>2 Q. I want to talk about the 2004 system. I know we 3 talked about it in various ways getting up to this 4 point, but I would just like to have a nice chunk of 5 time that we talk about that system.</p> <p>6 A. Okay.</p> <p>7 Q. Now, if I understood you earlier, what I wrote down 8 is that the AAA introduced you to the systems; is 9 that correct?</p> <p>10 A. Well, we developed the system specifically for the 11 AAA. The concept of voting in general from an 12 electronic standpoint we had done previously at 13 Shareholder Communications, again, in the context of 14 proxy voting, but the system as it is now was 15 developed specifically for the AAA for them to use. 16 Now, we have used the infrastructure that has 17 been built for other clients because we host the 18 application that it's -- you know, the requirements 19 that the AAA has imposed on the system applies 20 basically just in general for most all elections that 21 are done now that we're involved in, which again, 22 90 percent of all election business that we're doing 23 is for the AAA. And when we do -- when we do the 24 elections for the AAA, we really consider ourselves 25 just an extension of the AAA. I mean, the</p>	<p style="text-align: right;">Page 54</p> <p>1 relationship between AAA and us is that close, that 2 we're sort of just the technical arm for this 3 particular type of business for them.</p> <p>4 Q. The first election that you worked with AAA on, was 5 that an officer election for you, do you recall?</p> <p>6 A. I don't recall specifically. It was six years ago, 7 but certainly could have been. In all -- I'll put it 8 this way: In all likelihood, it could have been 9 because I think that it was originally set up to 10 handle two main types of elections for unions, and 11 that was officer election and contract ratifications. 12 Those are the two main things that we've done 13 unionwise for them, and I'm sure that it was a 14 relatively small election, but I don't recall whether 15 it was specifically an officer election or not.</p> <p>16 Q. Could you tell me a little bit about the interaction 17 in terms of getting this system together? I mean, 18 did you come in and say, "Here's my system that we've 19 used before for the proxy votes. Now let's see if we 20 can get this to be what you are looking for" or --</p> <p>21 A. Well, again, the initial contact was not done by me. 22 It was done by my partner, Chris. I'm -- I don't 23 know specifically what that conversation was. I know 24 that once I became involved, there was -- basically 25 that conversation was, "This is what we've done in</p>
<p style="text-align: right;">Page 55</p> <p>1 the past. This is what we think may work, and what 2 do you think we need to do to bring it up to the 3 level that would work for union elections," and then 4 the AAA, you know, explained to us that these are 5 the -- you know, these are the different things that 6 must exist. Now, certainly over time, there have 7 been some evolutions of the system based on, you 8 know, growing needs of different clients. If their 9 clients get bigger, they have -- and it's mainly in 10 the reporting standpoint, every client has specifics 11 that they want to be able to, you know, take back to 12 their boards or whatever to say, "Here's the 13 results," and all of these different formats or 14 charts and graphs and all of these things. And so 15 most of the system's evolution has been focused on 16 the tabulation of the results and, you know, how to 17 better display for the client what -- you know, what 18 the results are.</p> <p>19 The core infrastructure of the system has 20 not changed much at all over the past six years. 21 Some refinements here and there, but nothing -- no 22 major gap has been discovered. No radical change as 23 to the process has been done.</p> <p>24 Q. About how long from your initial contact with AAA, 25 yours or Chris's, to the extent that you know when</p>	<p style="text-align: right;">Page 56</p> <p>1 that happened, how long between that contact and the 2 first election?</p> <p>3 A. I don't know specifically when that first election 4 occurred, but I know that our initial development of 5 the system took maybe three months, four months, 6 something like that of, you know, developing it, 7 going back to them. Having them test it and having 8 us test it was about three months when -- I think it 9 was about three months when we had the first actual 10 election from the time we developed it.</p> <p>11 Q. Is that with you working full-time just on that 12 issue?</p> <p>13 A. Not just on that issue. As a consultant, we work on 14 a variety of things at one time, but during that 15 three months, that was a primary focus. That was my 16 main project. Of course, there was, you know, some 17 other little side things that we took care of for 18 other clients at the same time, but that was my 19 primary project I was working on.</p> <p>20 Q. Do you recall what key goals were laid out for you in 21 terms of what the system needed to do?</p> <p>22 A. I don't recall. I mean, again, I think that the 23 basic conversation was, you know, "This is what we've 24 done in the past that has worked. This is, you know, 25 what you want us to be able to do. Here's the system</p>

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1 that we think we can do for you."	1 something happen. I don't remember when it was
2 Q. Do you recall what system was used in the past --	2 printed or something like that where there were no
3 A. Well --	3 leading zeros on a number or something on the actual
4 Q. -- from the conversation that you had?	4 ballots. We had to accommodate that so if somebody
5 A. Well, when I say, "this is the system we used in the	5 typed in their social security number and the last
6 past," this is what we had done at Shareholder	6 four digits of their security number or employee ID
7 Communications, which was the proxy voting stuff.	7 number or whatever that secondary validation is, we
8 Q. Okay. So from your side of the table, you are	8 need to be able to understand that there was a zero
9 saying, "This is what we've done in the past, and now	9 there that didn't get printed. So if they only typed
10 you tell us how we can alter this to meet your	10 in three numbers, we made it four numbers because it
11 needs"?	11 should have been four numbers. That kind of thing.
12 A. What would you need it to do, you know -- or what	12 But other than that, I mean, we made some
13 would you need -- what would we need to change in	13 changes to the web portion in terms of the logo.
14 order for it to work for you?	14 They changed their graphic. We put a new graphic out
15 Q. Okay. Is the system that was used initially	15 there. Like I said, we did make the change for the
16 generally the same system that was used in 2004?	16 SSL portion to create this outside frame in the SSL
17 A. Uh-huh. And, generally, the same system that's used	17 in order to give the lock at the bottom and give the
18 today.	18 user a much better feeling that everything was
19 Q. Okay. Any modifications or tweaks to it that you can	19 secure. What else? I think we changed the display
20 specifically recall between, let's say, the first	20 format for large elections. We had one election that
21 system and the 2004 system?	21 had 200 plus candidate possibilities, and the initial
22 A. I mean, like I said, most of it -- we've added some	22 way things were being displayed, it wasn't showing up
23 extensive reporting to the back end, basically.	23 esthetically. So we changed how that worked.
24 We've certainly made some changes in terms of	24 There has been no changing midstream of an
25 validation criteria. I think at one point they had	25 election. Each election that comes along may have a

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1 certain requirement that we may have to adjust, like	1 language. It's more of like a scripting -- scripted
2 I said, the display properties of how the ballot is	2 language that Microsoft deals with. The interactive
3 displayed to the user, but again, from the core	3 voice response units are written in also sort of a
4 standpoint, there really has been no -- there haven't	4 scripted language, which is made by a company called
5 been any changes at all for how the system in and of	5 MasterVox. I think the company's name is MasterMind
6 itself processes the information or presents it back	6 Technologies. The product is MasterVox.
7 Q. Now, you've explained that you had a system that	7 Q. Has your system ever been, I guess, reviewed by an
8 you've used before, and you took AAA's requirements	8 independent, like election certification company or
9 and created a system, but did you go out and look at	9 something of that nature?
10 any of the other kind of Internet voting companies or	10 A. No. Oddly enough, it's hard to get somebody to do
11 mechanisms that were being used at that time?	11 that. It's also very expensive, but it's hard for a
12 A. No, we didn't. I think part of the reason was that	12 company to try and get that sort of a certification.
13 at that time, there really weren't any. They're	13 Again, the certification process for electronic is
14 certainly becoming much more frequent now, but six	14 not readily available. Now, you can certify your
15 years ago, this really was sort of a forefront	15 process for mail ballot situations, but again, I
16 undertaking for the AAA, and electronic voting, there	16 think the laws for electronic voting are kind of few
17 really just wasn't much to go on, which is, I think,	17 and far between. So I don't think there's a lot of
18 why we undertook it was because we could -- you know,	18 companies out there that will certify because they
19 we could be one of the forefronts for this.	19 don't know what they're certifying yet.
20 Q. What language is the system, the 2004 system?	20 Q. Okay. When you were talking about the fire walls for
21 A. Again, the 2004 system is pretty much the same as it	21 the system, could you tell me, I guess, what type of
22 is now. The Internet language is done in HTML, using	22 fire walls were in place for the 2004 election? Is
23 what's called ASP, which is an Active Server Page.	23 there a manufacturer? Is there a type, a level, a
24 It's a Microsoft I'm going to say sort of pseudo	24 grade?
25	25 A. I don't know specifically. I certainly don't know

<p style="text-align: right;">Page 65</p> <p>1 knowledge of where things are, what -- where they are 2 located, where they are stored and how the 3 information that's in there corresponds to any of the 4 other information.</p> <p>Q. Okay. The lines from you -- from the database to the 6 web server, dedicated lines?</p> <p>A. It is not a dedicated line. It does go through the 8 Internet, but again, the relationship from the two 9 machines is a trusted one. So that the database will 10 respond only to requests that are being made by the 11 web server using this particular protocol, and that's 12 how it determines that if a request is made using 13 this protocol, that it has to come from this machine 14 or from the address of this machine that it knows 15 ahead of time and vice versa. It also has to get 16 through those fire walls based on that trusted 17 relationship.</p> <p>Q. Other than the SSL, any other programs or mechanisms 19 in place to protect the information from the client 20 to the web?</p> <p>A. Only SSL, and whatever mechanism each client may have 22 installed, which obviously, could be anything or 23 could be nothing. The local security is really 24 dictated by that user. If they're overly protected, 25 then they'll be overly protected.</p>	<p style="text-align: right;">Page 66</p> <p>1 Q. Okay. You read a lot about Trojan horses, remote 2 access control. With those types of potential 3 threats out there to Internet security, those would 4 be threats that would have to be handled by the 5 client computer?</p> <p>A. Well, they're handled in all three locations, both 8 the web server and the database server which we -- 9 and I use the word "we" collectively meaning AAA and 10 Get-A-Geek. We have control over those things. We 11 maintain that all the security updates and patches 12 are applied as they're available. Once any sort of 13 operating system flaw's noted and there's a patch 14 available, it's applied. So the machine itself is as 15 protected as any other machine, and the same holds 16 true with the AAA web server. Although I'm speaking 17 for them in that regard, I am 100 percent certain 18 that their level of security, in terms of virus 19 protection and things like that, is at that level. 20 The client, on the other hand, is the unknown. Like 21 I said, they can have a ton of protection, or they 22 could have no protection, but the protection that's 23 afforded at the web server and then again afforded at 24 the database server provides protection to the data 25 that if for whatever reason the client machine has some sort of infection that could be a potential risk</p>
<p style="text-align: right;">Page 67</p> <p>1 to these other two machines, if it is preventable, 2 then these machines will have that prevention 3 installed.</p> <p>4 So the data is the last step in the line. 5 So it would have to fail -- it would have to not be 6 eradicated at the web server side before it gets to 7 the database. It would not have to be eradicated at 8 the client. So it actually has three steps it has to 9 fail before it actually gets to the physical data. 10 The other benefit is because it's a relatively 11 proprietary system, generally speaking, the viruses 12 and Trojans and things like that that are in the 13 Internet these days are relatively generic, and to 14 have something as targeted as -- targeted 15 specifically to this database or this data is 16 virtually unheard of.</p> <p>Q. Okay.</p> <p>A. Somebody would have a very specific malicious intent, 19 which we have not seen, obviously, but the targeted mechanism in order for a Trojan or something to specifically sit there and look at election traffic and know that it's looking at election traffic, the chances of that would be very, very remote.</p> <p>Q. Okay. Can I have that?</p> <p>A. Sure.</p>	<p style="text-align: right;">Page 68</p> <p>1 (WHEREUPON, the Reporter marked the 2 document referred to as Deposition 3 Exhibit No. 2 for identification.)</p> <p>Q. I just want to talk through pretty quickly what the 5 user sees in the election. We're talking very 6 specifically about the 2004 election. Before we go 7 on, did the system change in any way from the first 8 election to the run-off election?</p> <p>A. No, I don't believe it did. Now, like I said, the change we made to the SSL framing, I don't exactly remember when that was. I don't remember if it was between the first one and the second one. I know it was partly in response to complaints or concerns from the APA. Again, it may not have been this election at all. It may have been one following that. I don't exactly recall. But the time difference between the two elections was, I think, only about three weeks, and there were no significant changes, if any at all, made between those two.</p> <p>Q. Okay. So if I say the 2004 election, the same information would hold true between --</p> <p>A. Yes.</p> <p>Q. Okay. How did the voter get the information, to the best of your knowledge, for logging in?</p> <p>A. They receive a mailed ballot with voting instructions</p>

<p style="text-align: right;">Page 69</p> <p>1 on them. The ballot has instructions for using the 2 IVR system, as well as the web system. The ballot 3 also contains their personal identification number 4 that's generated by the AAA. We don't actually 5 generate those numbers, and the ballot then has a 6 sample of what the ballot actually is.</p> <p>7 Q. Did you personally or your company play a role in 8 creating the mail-out?</p> <p>9 A. No.</p> <p>10 Q. Did you provide snapshot pictures of what the 11 computer page would look like, if that was included?</p> <p>12 A. Today, you mean?</p> <p>13 Q. No. In the information that was sent out.</p> <p>14 A. No. No. Actually, it's the other way around. They 15 developed the ballot, and we create the system to 16 mimic the ballot.</p> <p>17 Q. Okay.</p> <p>18 A. In terms of look and feel. It doesn't always work 19 out that way, just because the ballot on a piece of 20 paper can function a lot easier layoutwise than it 21 can on HTML. But for the most part, the web portion 22 mimics the ballot, and the ballot is created first.</p> <p>23 Q. Authentication of the voter, how did that take place?</p> <p>24 A. It's a two-step process -- actually, it's a 25 three-step process. The user is required to enter in</p>	<p style="text-align: right;">Page 70</p> <p>1 their union ID, which in the case of this is APA, and 2 a personal identification number that's provided to 3 them by the AAA, and they enter that, and there's a 4 button there. They press "Submit." Then the system 5 verifies that the PIN number matches the union that 6 they're voting on, so that there is a PIN number with 7 that. It says, "Okay. Let's go to the next step."</p> <p>8 Q. When you say -- I don't mean to interrupt, but when 9 you say, "the system," is that your system that's the 10 database, or is it AAA's system at the web server?</p> <p>11 A. It is both. The processing in and of itself, the 12 logic behind it exists here. The data that it's 13 using to verify that information exists here. So the 14 two machines do work in conjunction with one another 15 in the fact that the web server takes the information 16 the client entered, says, "I want to verify that this 17 is correct," sends the information to the database to 18 say, "Look this up to see if it exists." The 19 database comes back and says it does exist or doesn't 20 exist, and then this says okay to the client, "let's 21 move on" or "let's not move on."</p> <p>22 Q. The pins and the employee identification numbers, is 23 that information, to the best of your knowledge, 24 stored in the web browser?</p> <p>25 A. No. It is only stored here (indicating).</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. It is only stored in the database?</p> <p>2 A. That's correct. It's a physical two-step process. 3 It first verifies that the PIN number exists within 4 the realm of that union ID, and if it does, will then 5 prompt the user for their employee identification 6 number. That is in the case of APA. If it does not 7 exist at that point, it comes back and says that the 8 PIN number that they entered is invalid. It gives 9 them three attempts to do that. Once they've 10 attempted the third time, if they attempt the fourth 11 time, it says that you've exceeded the number of 12 attempts, and they physically have to close the 13 browser and start over.</p> <p>14 Again, it's another deterrent for 15 automated systems because if it fails three times, it 16 won't do it anymore until the browser is physically 17 closed and brought back to that address. If it does 18 find that match, then it prompts for, again, the user 19 identification number -- or the employee 20 identification number, and then verifies that that 21 employee identification number matches the PIN number 22 that they had entered previously. If those two 23 pieces of information are correct, then it assumes 24 that you are the right person. The process of that 25 type of validation is probably the best mechanism</p>	<p style="text-align: right;">Page 72</p> <p>1 because it is a piece of information that you've been 2 given and a piece of information that you know and a 3 piece of information we know so that we're not giving 4 you both pieces of information to put in. We give 5 you one, and you give us one. We both know what it 6 is. If it all matches, then we're good.</p> <p>7 Q. Okay. How is the voter information stored in the 8 database? Is it just a file, a series of names?</p> <p>9 A. It's a series of records. What accompanies that 10 information varies from client to client, but 11 typically, it is the person's name, usually their 12 address because they receive mail ballots. In the 13 case of APA, their employee identification number. 14 This particular election contained also their 15 domicile information so that they could track, you 16 know, the voting results by domicile and their 17 personal identification number. That information is 18 all stored separately in one table. Like I 19 brought -- this is a somewhat stripped down version 20 of this information. Again, this is a unique 21 identifier that is assigned by us when we enter the 22 information. It's a completely internal number. 23 This number is not known by anybody but me -- or by 24 us, I should say.</p> <p>25 Q. When is that number assigned?</p>

<p style="text-align: right;">Page 73</p> <p>1 A. It is assigned when I actually physically import the 2 data into the database. It's automatically generated 3 by the database. It's a sequential number. It's 4 unique for the entire population within that database 5 regardless of how many records are in there. And it 6 is -- like I said, it is an internal number that once 7 the person has been identified, this number is the 8 only reference to that person going back and forth on 9 the Internet. So the PIN number is no longer used in 10 context. The employee ID number is no longer used in 11 context. It's this number, and again, this number is 12 only known in the confines of the database. AAA 13 never gets that number, nobody ever gets that number. 14 It's all kept internal. That is the internal 15 reference number that the system uses to know who 16 that person is.</p> <p>17 The PIN number, again, that's assigned by 18 AAA. There's the name, the employee identification 19 number and then the domicile. There's other pieces 20 of information that we store along with this, when it 21 was imported, by what mechanism it was imported, 22 whether it was manually added or imported. Again, 23 the address information, I think is probably 24 associated with this. They were pretty good at that. 25 That's pretty much it.</p>	<p style="text-align: right;">Page 74</p> <p>1 Q. Did you make a copy for us to take? 2 A. Yeah. These are your copies. You get this and 3 electronic versions. 4 Q. I don't want to put all 152 pages, but I'd like -- 5 since we're referencing, to have at least one of the 6 pages marked as the Deposition Exhibit 3. 7 A. Now, like I said, this one is actually for the 8 run-off election. I also have the same one. It's 9 not the same list. It's the list appropriate for the 10 regular election, as well. 11 (WHEREUPON, the Reporter marked the 12 document referred to as Deposition 13 Exhibit No. 3 for identification.) 14 MS. JABERG: So for clarification, 15 Exhibit 3 is Page 1 of 152 of the 16 document you're referring to specific 17 to the run-off election in 2004? 18 A. Yeah. This is just the example of what I pulled up 19 here. I also have the same type of list for the 20 regular elections. 21 Q. Okay. The unique identifier number, you have a list 22 of numbers, and it's obviously, what, six digits? 23 A. Actually, it is many more than that, possible. It's 24 just -- at this point, this is how many it got to be. 25 Q. Are those numbers in sequential order and are the</p>
<p style="text-align: right;">Page 75</p> <p>1 names in alphabetical order generally?</p> <p>2 A. It depends. It depends on what order the data came 3 to me in. If it was in alphabetical order in the 4 source data -- and this apparently was. This was in 5 order by last name -- this number is assigned 6 sequentially as each record is imported. So if it 7 were in PIN number order, it would be in that 8 sequential number.</p> <p>9 Q. Who has access to this information?</p> <p>10 A. Myself and Chris LaRose.</p> <p>11 Q. Okay. Anyone with access to that information before 12 it was loaded onto your computer?</p> <p>13 A. The actual member list, I can't tell you. I get it 14 from the AAA. So, apparently, they had access to it. 15 But where it came from prior to that, I don't know. 16 Usually, I can see, you know, on the E-mail I get or 17 whatever, that says this is where it came from or 18 whatever, but sometimes I don't. In the case of 19 this, I don't know.</p> <p>20 Q. The information that came to you from the AAA would 21 be the PIN number, the name, the employee 22 identification number, the domicile, and then you 23 said the other information that might have been 24 attached?</p> <p>25 A. Yeah. The address information.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Okay.</p> <p>2 A. It undoubtedly came as a spreadsheet, I would think.</p> <p>3 Q. Okay. Once you input the data, so now you have this 4 152 pages for the run-off election, and you have the 5 unique identifying number and the PIN numbers and 6 the -- do you download that information onto printed 7 form?</p> <p>8 A. No.</p> <p>9 Q. It's always just stored electronically?</p> <p>10 A. I only did this for you.</p> <p>11 Q. Okay. If I were sitting in your office at home and 12 you were pulling up the information, what would I 13 see? A list that looks like that (indicating)?</p> <p>14 A. It would look very much like this (indicating).</p> <p>15 Q. Could you access that list from a remote location?</p> <p>16 A. Yes. That's what I do. Because I live in 17 North Carolina and the data is actually in New York, 18 I actually access that remotely. Again, I can do 19 that because my machine at home is trusted through 20 the mechanisms in the office in New York, and 21 specifically my machine and Mr. LaRose's machine can 22 get to that information. From the outside world, 23 that information doesn't even exist. It's not 24 visible at all to the outside world.</p> <p>25 Q. If you weren't on your computer, if you were at</p>

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<p style="text-align: right;">Page 77</p> <p>1 Starbucks on one of their computers, is there a 2 mechanism in place that would allow you to access 3 that information?</p> <p>4 A. No. I would have to be on my machine in order to get 5 to it because the address of my machine is what's 6 recognized through the system up there.</p> <p>7 Q. Okay. Did your system have a way of logging attempts 8 to vote?</p> <p>9 A. Yes. I brought that. 10 (Pause in proceedings.)</p> <p>11 A. There are, again, two interfaces, both the Internet 12 and the IVR, interactive voice response, both of 13 which have an attempts rate and a vote rate. The IVR 14 is relatively simple to see because you dial a phone 15 number, it doesn't result in a vote, and that's 16 pretty easy. The web hits are a little more 17 difficult to track because if you refresh the page, 18 that could be considered another hit. So it's not 19 quite as specific as the IVR because, obviously, you 20 have to physically make another phone call in order 21 for it to be recognized as another hit, but showing 22 these -- and this is for the run-off -- there were 23 5,612 hits and those hits resulted in 4,684 physical 24 votes. So the difference between that is almost 25 1,000 hits.</p>	<p style="text-align: right;">Page 78</p> <p>1 Again, a hit may also -- with the 2 Internet, a hit may also be considered a search 3 engine coming and indexing that site. It doesn't 4 know the difference at this point because a hit is 5 just asking for that page. So it's difficult to say 6 what that 1,000 extra hits are. All we know is that 7 those 1,000 hits did not result in anything 8 significant.</p> <p>9 Q. I see you have listed here votes after ineligibles 10 and vote before in eligibles. How were the 11 in eligibles removed from the list? I'm jumping ahead 12 but --</p> <p>13 A. The ineligibles towards the end of the election, 14 usually a day before, we receive a list of basically 15 the same list with people who have been removed. So 16 the second list is smaller than the first list, and 17 what I do is I take that second list, and based on, 18 in this case, the employee identification number 19 because the second list does not have PIN 20 information. It only has the employee ID number. 21 Based on the employee ID number, which is assumed to 22 be unique, then that is compared to what we already 23 have. Those that are not in the second list are 24 deemed ineligible, and any votes that have been cast 25 by those that have been deemed ineligible are also</p>
<p style="text-align: right;">Page 79</p> <p>1 marked as ineligible.</p> <p>2 Q. So you have to -- so it's a pool of votes sitting out 3 there and you got to pool the voters who voted those 4 votes, and you get a second list, and now that list 5 doesn't have as many votes. So you have to go back 6 in and say, "Here's the pool of vote. Now I've got 7 to extract the votes from the people who are now no 8 longer on the list"?</p> <p>9 A. Exactly.</p> <p>10 MS. PARKER: Okay. We should go ahead and 11 mark this as Exhibit 4, and it's Page 1 12 of 1. It reads, "APA National 13 Election - Runoff, hits VS Votes." 14 (WHEREUPON, the Reporter marked the 15 document referred to as Deposition 16 Exhibit No. 4 for Identification.)</p> <p>17 Q. What did the voters see when they went on to cast 18 their vote? I know you talked about the three-part 19 screen with the side and the head. What was actually 20 in that middle section? What were they seeing? What 21 were they clicking?</p> <p>22 A. They get a screen. Now, in these particular 23 elections, for the national election they had three 24 offices. So they had president, vice-president and 25 secretary-treasurer. If I recall correctly, in that</p>	<p style="text-align: right;">Page 80</p> <p>1 middle box -- just to clarify, this up at the top 2 only had a graphic, the AAA's graphic. This along 3 the side had the title of the election they were 4 voting for right here, which would have been the APA 5 national election for president, vice-president, 6 secretary-treasurer, I think was the actual name of 7 the ballot. Once they were validated, it would bring 8 them to a screen that would have, I think at the top 9 and then -- I don't know that these were actually 10 outlined like this, but then it would have the first 11 office president, vice-president and 12 secretary-treasurer, and candidate, candidate, 13 candidate, candidate, candidate. However many there 14 were. (Indicating) 15 It would say, "The following pilots 16 are" -- let's see if I can remember it. It's always 17 the same. "The following pilots are candidates for 18 the office of president for the APA national," 19 whatever. Then it would say their names, and then it 20 would say, "Please vote for only one candidate." 21 Then it would list each candidate and say, "Yes, I 22 vote for Captain Ralph Hunter. I vote for Mark 23 Hundau," whatever. Say for this one and this one. 24 All three offices were visible on the screen at one 25 time. They would select whichever one they wanted,</p>

<p style="text-align: right;">Page 85</p> <p>1 A. Well, I didn't print that, but the vote -- are you 2 talking specifically the vote record?</p> <p>3 Q. Yes.</p> <p>4 A. A ballot based on the number of candidates that are 5 selected, each candidate or each office can have a 6 number of vote records. So if you voted for three 7 different candidates, there's going to be three 8 individual vote records, and that record has a date. 9 Initially, during the life of the election has the 10 associated member ID number, has the office ID. So 11 if it's president, that has its own ID number. So it 12 has an ID number for the office. It has an ID number 13 for the candidate, and that's pretty much it. I 14 mean, it has some other things. If it were a 15 write-in, it would have what you typed in for the 16 write-in, but in the context of the APA, it's a 17 member number, candidate number -- or member number, 18 office number and a candidate number.</p> <p>19 Q. What you're calling the member number, is that the 20 unique identifier?</p> <p>21 A. That's the unique identifier.</p> <p>22 Q. And all of that is stored in a database?</p> <p>23 A. In a separate table from the members themselves.</p> <p>24 Q. Okay. Is that list included on the CD of how that 25 list would look?</p>	<p style="text-align: right;">Page 86</p> <p>1 A. It's not specifically in that format. I did bring -- 2 (Pause in proceedings.)</p> <p>3 A. This one is the list of -- this doesn't correspond to 4 the vote record much at all, but this is a list of 5 the people who voted. It doesn't tell you how they 6 voted because at this stage of the game, we can't 7 tell you that anymore because the link between those 8 two pieces, this and the vote, are gone. The -- but 9 this is a list of who voted. I just generated the 10 PIN and the name and then their eligibility status at 11 the end of the election. The vote list itself I did 12 not bring that. (Indicating)</p> <p>13 Q. Okay. Could you talk a little bit about the "Change 14 Vote" feature?</p> <p>15 A. Sure.</p> <p>16 Q. How did it work?</p> <p>17 A. If someone cast a vote, they could come back at a 18 later time and change their vote. When they would 19 log in, the system would come up and say we -- "You 20 have previously voted on," and it gave you the date, 21 and it would say, "Would you like to change your 22 vote," and you would have to press "Submit," and you 23 would go in. Now, on the website, it would actually 24 show you what the previous vote was, and some people 25 did use it to verify the fact that they had voted the</p>
<p style="text-align: right;">Page 87</p> <p>1 way they wanted to.</p> <p>2 Q. Would it show you -- sorry to interrupt. Would it 3 show you the same screen that you talked about before 4 where it had all four candidates but three of them 5 were gray?</p> <p>6 A. No. It would bring you to this initial screen with 7 the check boxes. If you actually said, "I want to 8 change my vote," it would bring you back to this 9 screen with the check boxes, with the one that you 10 had checked previously, and you would have to uncheck 11 that one, check a different one and press "Submit." 12 Then it would go through the same process. It's 13 exactly the same. The only difference would be is it 14 would have things filled in where you had already 15 voted. But it did notify you that you had voted 16 previously before. It would just bring you to that 17 screen. The IDR, on the other hand, if you had voted 18 previously, would tell you that you had voted 19 previously, but it would not tell you how you voted 20 previously.</p> <p>21 Q. I had a question, and it just completely went whoosh, 22 right out into thin air.</p> <p>23 A. I think it is important, and I'm sure it's been 24 mentioned, that the "Change Vote" feature is an 25 option. It can be turned off and turned on based on</p>	<p style="text-align: right;">Page 88</p> <p>1 what the client has requested. With regard to these 2 particular elections, it was physically requested 3 that they be able to change the vote. Subsequent to 4 these elections, they no longer have that option -- I 5 mean, they have the option, but they don't exercise 6 the right to use it. This was not something that we 7 imposed on them. They actually requested the ability 8 to be able to do it.</p> <p>9 Q. Did the system record any information in terms of 10 where the vote came from?</p> <p>11 A. To some extent, yes. We record -- from the web, we 12 record the source IP address. As I had mentioned 13 before, every computer has its own unique address. 14 So every hit is also recorded with the IP address of 15 who's making that request. The drawback to that is 16 that there are a number of instances where that 17 address is shared amongst many people because you can 18 have a central computer within your office that all 19 your internal traffic is routed through, and when you 20 go to a site somewhere in cyber space, it's that 21 central computer's address is what gets marked on the 22 far end. Same thing holds true when you go and use a 23 service provider like AOL. They have a certain block 24 of addresses, and those addresses can be used by, you 25 know, millions of people.</p>

<p style="text-align: right;">Page 89</p> <p>1 So it's not 100 percent accurate, but it's 2 accurate enough from our perspective to be able to 3 see if an abuse situation may be occurring. If we 4 have hundreds and hundreds of requests coming from 5 the same IP address, it certainly raises red flags 6 and, you know, causes us to do some further 7 investigation. Now, it may turn out to be that it's 8 one of these where it's a central computer and people 9 are voting from an airport terminal or something like 10 that, in the case of pilots, but to this point, we 11 have never had an incident where it has even raised a 12 red flag, let alone forced us to go and investigate a 13 problem. Now, we do spot-check it, and we certainly 14 check to make sure that things are as they should be, 15 but we never had that sort of a situation. The same 16 holds true on the telephone side is with the caller 17 ID situation, we can track what number the phone call 18 comes from.</p> <p>19 Q. How long is that information saved for?</p> <p>20 A. Currently, forever. We have not destroyed any 21 information.</p> <p>22 Q. Where is that saved, I guess, in this system because</p> <p>23 you have the list that you showed me that we marked</p> <p>24 Deposition Exhibit 3, and you said there was other</p> <p>25 information out there but it wasn't here.</p>	<p style="text-align: right;">Page 90</p> <p>1 A. Right.</p> <p>2 Q. Would that other information include the web address?</p> <p>3 A. Absolutely, yes. The call log information, which we 4 call the call log information, which records the 5 initial hit and has that web address information is 6 also there, is stored there. It's -- again, in and 7 of itself, it's in a separate table. That 8 information isn't necessarily associated with the 9 vote. It's not associated with a member. It's its 10 own entity.</p> <p>11 Q. Okay. Any mechanism in this system which would allow</p> <p>12 you to determine that someone was logging in as</p> <p>13 someone other than themselves?</p> <p>14 A. No. I mean, because in order to log in to the 15 system, you have to have the correct personal 16 identification number and the employee ID number that 17 matches. The assumption from the system standpoint 18 is if you have those two pieces of information, 19 you're you. There's nothing on our end that can 20 specifically say you aren't the one that's supposed 21 to have that information, but if you have it, you're 22 valid as far as we know.</p> <p>23 Q. Does the system keep a record of who specifically</p> <p>24 changed their vote?</p> <p>25 A. We do. I brought that list.</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Okay.</p> <p>2 (WHEREUPON, the Reporter marked the 3 document referred to as Deposition 4 Exhibit No. 10 for identification.)</p> <p>5 A. This list shows the date, their employee ID and their 6 name, and all of the members -- and actually, this 7 one is for the regular election, of all the members 8 that changed their vote at least once. A change is a 9 change. If you change it 50 times, we just see it as 10 a change. So the date on this is the last date of 11 the change.</p> <p>12 Q. But there's a record here of that. I believe there's</p> <p>13 only four pages. It's listed here with the employee</p> <p>14 identification number.</p> <p>15 A. Uh-huh.</p> <p>16 Q. Is that how it was stored in your database?</p> <p>17 A. It's actually stored on that same record as the 18 member information. There's just a flag that says 19 changed, yes or no with the date.</p> <p>20 Q. So the unique identifying information is also --</p> <p>21 A. It is. I just printed this -- this list here because 22 I think this was actually a list that I had printed 23 for -- in response to something else. So I just 24 reprinted it for this.</p> <p>25 Q. Okay. When was the link -- well, there's an</p>	<p style="text-align: right;">Page 92</p> <p>1 assumption in that question. As I understand you in 2 explaining the system, there's a link. I assume 3 there has to be between the voter and the vote so 4 that you can go in and remove the ineligibles; is 5 that right?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Okay. And to allow people to change their vote; is</p> <p>8 that correct?</p> <p>9 A. Uh-huh.</p> <p>10 Q. You have to say "yes" because she's taking it down.</p> <p>11 A. Yes.</p> <p>12 Q. When is that link broken?</p> <p>13 A. Once the official certification has been issued, I 14 remove the link off of the voting record, which is 15 the link is that unique identifier. So once the 16 official certification has been done, the link, the 17 unique identifier -- the member's unique identifier 18 is removed from the vote.</p> <p>19 Q. How is the vote certified?</p> <p>20 A. AAA does that.</p> <p>21 Q. Okay. You just provide the data, and they tell you</p> <p>22 everything is okay or not okay?</p> <p>23 A. Exactly.</p> <p>24 Q. How does the system change without the "Change Vote"</p> <p>25 feature?</p>

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<p style="text-align: right;">Page 93</p> <p>1 A. If they don't have the "Change Vote" feature, then 2 when they log on the second time or a subsequent 3 time, the system comes up and says, "You have 4 previously voted on" whatever date. "You are unable 5 to change your vote," and that's it.</p> <p>6 Q. Okay. I asked you about whether or not the system 7 could determine if the person putting in the PIN 8 number and the employee identification number was 9 actually the person who should be using that 10 information.</p> <p>11 A. Uh-huh.</p> <p>12 Q. Is there a way to design a system that would let you 13 know that information?</p> <p>14 A. No, because there's no guarantee that you are who you 15 say you are right now. I mean, you've given me a 16 business card and you've given -- you know, I've seen 17 your identification, but I don't know that you really 18 know that you are who you say you are. So even in 19 the physical realm, there's no guarantee. We do the 20 best we can in providing mechanisms for thwarting any 21 sort of wrongdoing. There is no absolute guarantee, 22 as with -- like I said, with any situation.</p> <p>23 Q. You made a comment right before we started, and I 24 want to go through some of the materials that I sent 25 you, but you made a comment about your system being</p>	<p style="text-align: right;">Page 94</p> <p>1 as secure if not more secure than what's out there.</p> <p>2 A. Uh-huh.</p> <p>3 Q. I'm interested in knowing why you think that's so.</p> <p>4 A. Well, a lot of this is covered in the response to the 5 Serve Report, but with a mail ballot, there are 6 certain risks. I mean, even let's take something as 7 grand as the national presidential election. There 8 are risks at every step of the process, and 9 obviously, the larger the process, the more risk 10 there is because there are certainly more steps that 11 it goes through. Part of our system is its 12 minimalism in that it has a very specific task. 13 That's all it does. It doesn't do anything else. It 14 eliminates a lot of the interim steps that a regular, 15 let's say, mail ballot system would go through.</p> <p>16 In a mail ballot system, this one set 17 aside a little bit because they do generate the 18 ballot, physical ballot, but getting that ballot 19 back, you have the postal service that you have to 20 deal with. You have your local mailbox that you have 21 to deal with. That ballot goes to, obviously, some 22 central location where somebody physically has to get 23 that ballot and, providing that you have filled out 24 your ballot correctly and put it back in the 25 envelopes correctly, and that person who is receiving</p>
<p style="text-align: right;">Page 95</p> <p>1 those ballots is on the up-and-up and they do what 2 they're supposed to do with the ballot, and then the 3 person that records the vote is doing what they're 4 supposed to. So you see all these steps that even 5 just a regular mail ballot must go through.</p> <p>6 We tend to eliminate a lot of those steps 7 in that one of the only big factors that we can't 8 control is that you are filling it out correctly, and 9 we try to impose some restrictions on the system in 10 order to force you to fill it out correctly. If 11 you're going to take the time to fill it out, we're 12 going to try to make sure you fill it out correctly, 13 which you don't have in place on a mail ballot. You 14 could check five boxes on the mail ballot, even 15 though you're only supposed to check one. We keep 16 you doing that, but on a mail ballot, then your vote 17 is just invalid at that point, and it's just chucked 18 out. So we try to impose those types of things.</p> <p>19 In terms of security, there's nothing to 20 say that the ballot, when you return it, isn't 21 intercepted. There isn't something to say that the 22 ballot you return isn't mutilated or otherwise 23 compromised on its return. It doesn't happen often, 24 but it does happen. Again, there's nothing to say 25 that the person collecting the ballots is not</p>	<p style="text-align: right;">Page 96</p> <p>1 influenced in some way to lose a few ballots or 2 something like that. I mean, there's a myriad of 3 things that, even in a mail ballot situation, could 4 occur that we just don't deal with in the electronic 5 realm because nobody is touching the information. 6 You put your vote in, and it's there. Nobody does 7 anything with it until we report on it at the end.</p> <p>8 Again, with the APA, they do get a 9 physical ballot in the mail that includes their 10 instruction sheets and the personal identifying 11 number, and again, that process is the same for this 12 system as it would be for a regular mail system, but, 13 I mean, that in and of itself again has risks. 14 Somebody could intercept that and get your PIN 15 number. All they need now is your employee ID 16 number. They could vote your ballot for you.</p> <p>17 So from a risk standpoint, like I said, we 18 have -- as an electronic system, I think we have 19 eliminated a large number of middlemen types of 20 processes, thereby reducing the amount of risk that's 21 involved. Now, does it impose risk by doing it over 22 the Internet? To some extent. But it doesn't -- I 23 don't believe that it imposes any risk that's greater 24 than what's already out there in terms of a mail 25 ballot. I mean, we're not increasing your risk. We</p>

24 (Pages 93 to 96)

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<p style="text-align: right;">Page 101</p> <p>1 Q. Mr. Hayes met with you at your home to discuss the 2 system that was used in the 2004 APA officer 3 elections; is that correct? 4 A. He did, yes. 5 Q. Okay. Are his notes from that interview an accurate 6 reflection of your comments about the 2004 APA 7 system? 8 A. As best as I recall after reviewing it, it is 9 accurate. 10 Q. Okay. Even if you can't recall exactly what you 11 conveyed to him, are his notes in terms of how the 12 system is designed, are those all accurate? 13 A. It is. There was no -- there was nothing within this 14 report that is different from what I actually just 15 explained here today. 16 Q. Okay. Any parts in there that gave you pause that 17 made you think, "Well, okay. That's generally what I 18 was saying. Maybe I wouldn't have said it quite that 19 way"? 20 A. I'm just glancing through it. 21 Q. Take your time if you want to look over that. 22 (WHEREUPON the witness reviewed 23 Exhibit No. 5.) 24 A. I believe so. I believe everything is accurate. 25 There does not seem to be anything that jumps off the</p>	<p style="text-align: right;">Page 102</p> <p>1 page as erroneous. 2 Q. Okay. There's a follow-up interview conducted in 3 April of 2005. It was via telephone with Jolyn 4 Underwood as the investigator. You've seen that 5 document? 6 A. I did see it. This is again one of the ones that -- 7 MS. PARKER: It's two pages. We'll mark 8 that as Deposition 6. 9 (WHEREUPON, the Reporter marked the 10 document referred to as Deposition 11 Exhibit No. 6 for identification.) 12 Q. Are the statements contained in those notes an 13 accurate reflection of how the system worked in the 14 APA elections in 2004? Please don't feel rushed. We 15 have enough time for you to look through those. 16 (WHEREUPON the witness reviewed 17 Exhibit No. 6.) 18 A. Okay. It does seem correct. 19 Q. I'm going to run through these very briefly, just so 20 that some of the statements are on one record for me 21 to read through. 22 A. Okay. 23 Q. I guess most of this has already been explained when 24 we had the system explained, but I just want to 25 verify. Two separate databases within the database</p>
<p style="text-align: right;">Page 103</p> <p>1 that was present in New York. Would that be 2 accurate? 3 A. Yes. The terminology more accurately is two tables 4 within the database as a whole. 5 Q. Okay. With the database really being the server and 6 then information within that? 7 A. Absolutely. The container, yes. 8 Q. Okay. And one of those databases, we have something 9 that looks similar to what's been marked as 10 Deposition Exhibit 3 with a unique identifying 11 number, PIN number, name and employee identification 12 number? 13 A. Yes. 14 Q. Okay. And in the other database, we have something 15 that's a unique identifying number and the vote -- 16 A. Unique identifying number of the member. A unique 17 identifying number of the office for which the 18 candidate is running, and a unique identifier for 19 that candidate. That is considered a vote for that 20 candidate. 21 Q. Okay. And you -- well, let's just back up. Who all 22 would have access to those two tables of information 23 within the database? 24 A. Myself and Chris LaRose. 25 Q. Okay. And in that particular election, members were</p>	<p style="text-align: right;">Page 104</p> <p>1 allowed to come back in and change their votes up 2 until the close of the election? 3 A. That is correct. 4 Q. In order to be able to do that, the unique 5 identifying number would have to link who the voter 6 was and who they voted for, for you to be able to go 7 in and change -- or for the system to allow the vote 8 to change? 9 A. That, and to apply ineligibility at the end, that 10 link. Those need to exist. 11 Q. Okay. And that link is broken after the election is 12 certified? 13 A. That's correct. 14 Q. Okay. The report notes where there were some 15 instances where new PIN numbers had to be created. 16 When the new PIN numbers were created, did you go 17 back in and remove the old PIN numbers from the 18 system? 19 A. Yes. Providing that it was not an unknown duplicate. 20 If it was someone who was on the original list, I 21 would actually locate that member record and change 22 the original PIN number so that the original PIN 23 number was no longer there. If it was someone that 24 was new all together, then that record was manually 25 added at the end of the list.</p>

<p style="text-align: right;">Page 105</p> <p>1 Q. Have you ever spoken with any part of the APA 2 leadership or membership? 3 A. No. 4 Q. Not before or after the 2004 elections? 5 A. No. 6 Q. The password -- it notes that during the election, 7 that you provided a password to Jeff Zano that 8 enabled him to monitor the progress of the election. 9 What access did that provide to Zano. 10 A. It provides him visual tabulation. It's essentially 11 this, what you see here that shows the office, the 12 candidate, the current number of votes. There is 13 also -- they can see the number of votes that are 14 coming in each day as a total for that day. There's 15 a variety of charts that are available that breaks 16 down this information and just visually breaks it 17 down into bar charts just so you can kind of get a 18 very quick look at where things stand. 19 Q. Okay. Actually, when you say, "this," we should mark 20 this. We're talking about the "APA National Election 21 Voting Results (Uncertified)" -- 22 A. Uh-huh. 23 Q. -- "Page 1 of 1." We'll mark that as Deposition 24 Exhibit 7. 25 ///</p>	<p style="text-align: right;">Page 106</p> <p>1 (WHEREUPON, the Reporter marked the 2 document referred to as Deposition 3 No. 7 for identification.) 4 Q. Did your system have an ability to see how many 5 times, if any, Mr. Zano came in to look at the 6 results? 7 A. No. 8 Q. I'm not going to go through all of this. I think it 9 is all information that we have gone through before. 10 There was another report of investigation. This one 11 from 2003. 12 A. Right. This would have been the first meeting, yeah. 13 Q. Okay. That report of -- that interview was also 14 conducted by Robert Hayes? 15 A. This was, yes. 16 Q. Okay. 17 MR. DEAN: Excuse me. Which number is 18 that? 19 THE WITNESS: 02288. 20 MS. PARKER: Let's go ahead and mark that 21 as Deposition Exhibit 8. 22 (WHEREUPON, the Reporter marked the 23 document referred to as Deposition 24 Exhibit No. 8 for identification.) 25 Q. You've had a chance to read over that document?</p>
<p style="text-align: right;">Page 107</p> <p>1 A. I did. 2 Q. Was it an accurate reflection of the conversation or 3 that interview? 4 A. Yes. And this interview actually was an information 5 gathering interview. I think the purpose behind this 6 was that the Department of Labor was actually trying 7 to figure out how to regulate these kinds of 8 elections. So I think this was more of an 9 informative type of interview. I don't believe it 10 dealt specifically with any given election, but I do 11 recall that interview, yeah. 12 Q. Okay. And Mr. Hayes's reflections on that interview, 13 although I understand you might not remember it since 14 this was 2003, but his notes on how the system worked 15 are accurate? 16 A. They appear to be, yes. 17 Q. Feel free to look through it. I want you to be 18 comfortable. 19 A. This actually was the first one that I looked 20 through. This is -- it is apparently accurate. 21 Q. Now, with all of these documents, you've used the 22 term "apparently." That's fine if that's as 23 comfortable as you feel going with the documents, but 24 I do want to give you the opportunity, and looking 25 through them again, if there are areas that you're</p>	<p style="text-align: right;">Page 108</p> <p>1 just kind of gray on and you don't necessarily want 2 to commit, I want to know what those areas are in the 3 documents. So if you want to look through them 4 again, you are -- 5 A. It's fine. The only reason I say, "apparently" is 6 that, again, the first time I saw these documents was 7 just the other day when you sent me copies. I have 8 certainly read through them. I couldn't recite them 9 back to you, but to my recollection and from my 10 reading these, they do seem to be correct -- 11 Q. Okay. 12 A. -- and accurate. 13 MS. PARKER: If you don't mind, I'd like 14 to take like a five-minute break just 15 to make sure that I know where I'm 16 going because we have about half an 17 hour left. I want to make sure I'm 18 finished. So let's take about five 19 minutes, and then we'll finish up. 20 THE WITNESS: Okay. 21 (WHEREUPON a recess was taken from 22 12:33 p.m. to 12:38 p.m.) 23 Q. I just want to make sure we have gone through all the 24 documents that you brought in response to the request 25 for documents.</p>

<p style="text-align: right;">Page 117</p> <p>1 apparently, that shows the people who changed their 2 votes. When somebody goes in and changes their vote, 3 does the original vote remain recorded?</p> <p>4 A. It does. All votes that have been submitted remain 5 within the database itself. The original vote is 6 marked as inactive, and the new votes are then 7 recorded.</p> <p>8 Q. If someone goes in and revotes for the same person, 9 does the system make a report of that?</p> <p>10 A. Yes. It would be considered two separate votes. It 11 doesn't know there was a difference between what you 12 voted before and voted now. It just says you're 13 changing it. So it marks the original ones as 14 inactive and then records the new ones.</p> <p>15 Q. In the list that you provided, which I have not 16 reviewed, does it distinguish between people who 17 changed and voted for somebody else and somebody who 18 changed but revoted for the same person?</p> <p>19 A. No, it doesn't. There's no mechanism -- again, once 20 the link is gone, there's no mechanism to say that 21 this set of votes and this set of votes are now 22 matched together because the link between them have 23 been removed. They are now just individual votes for 24 a candidate. They belong to the candidate, but they 25 have no member associated with them now.</p>	<p style="text-align: right;">Page 118</p> <p>1 Q. So even the votes that have been marked as revote, 2 essentially, are just listed individually. They're 3 not together with the new vote?</p> <p>4 A. Right. Once the certification is done, all of the 5 links between them are gone. So even the ones that 6 have not been revoked -- in the example of this where 7 you have three offices, during the election, you have 8 three votes that are associated with you. Once the 9 link is removed, those three votes are now completely 10 independent, and they have no link to one another. I 11 couldn't even tell you that you voted for each 12 candidate, let alone what you voted for.</p> <p>13 Q. This linkability of the two databases, you use it for 14 dealing with these eligibility lists at the end. You 15 use it for the "Change Vote" feature. Is there any 16 other reason you have to use that linkability?</p> <p>17 A. No.</p> <p>18 Q. I thought I saw in one of the reports that there was 19 an occasion when you changed a PIN number or assigned 20 a new PIN number when it was necessary for you to 21 check and see if there had been a vote with the prior 22 PIN number and then pull it if there was. Is that 23 incorrect?</p> <p>24 A. I did that, I believe, one time. It's not 25 necessarily a requirement. I think I could check to</p>
<p style="text-align: right;">Page 119</p> <p>1 see if the person had voted only because that link 2 was available. Had it not been there and I said, you 3 know, "I can't tell you if they voted before," it 4 wouldn't have made a difference either way. Changing 5 the PIN for a particular person is done independently 6 from the voting structure. So I think it was -- I 7 think the issue was somebody wanted to know if they 8 had voted -- they wanted to know if they had voted 9 prior to changing the PIN to make sure this wasn't 10 somebody else just saying, "I need a new PIN number" 11 or something like that. They had part of the 12 information or not. The requests simply come to me. 13 I don't verify who the person is. I don't do any of 14 that. That's all done from the AAA standpoint. When 15 I get a request to do, let's say, a change to the PIN 16 or issue a new PIN, my assumption is all 17 verification, validation of who that person is and 18 that they should be getting it has already been done. 19 The mechanism for recording whether a 20 person has voted or not is actually -- there is a 21 mark on the member record of itself that says you 22 voted, which is also how we can also determine that 23 you had changed your vote after the fact. We note 24 that you did vote on the member record. We don't 25 keep how you vote, just that you voted and then -- so</p>	<p style="text-align: right;">Page 120</p> <p>1 the link between those, I could say yes, we know this 2 person did vote. I couldn't tell you who they voted 3 for or how they voted, but they did vote once the 4 election has finished, but during the election, that 5 link is there, and I could actually go to the vote 6 records and say, "This person did vote. It's a 7 complete ballot," or whatever if I needed to. I've 8 never had to do that other than to determine the fact 9 that yes, there are some vote records that exist for 10 that person.</p> <p>11 Q. Okay. Just so the record is clear -- and I realize 12 as you're speaking that I am not clear. We've 13 identified these two databases. We'll call one the 14 member database and the other the vote database. 15 Now, in the member database, you've indicated that at 16 the beginning of the vote, the information in that 17 database for each member is the member, this unique 18 identifier that is sequentially assigned, an address, 19 by which you mean their mailing address?</p> <p>20 A. Mailing address.</p> <p>21 Q. Domicile?</p> <p>22 A. For some elections, yes. Certainly for APA.</p> <p>23 Q. A domicile, an employee ID number, and those are the 24 categories that are listed on what is Deposition 25 Exhibit 6, which is Chao-02005. It's this list</p>

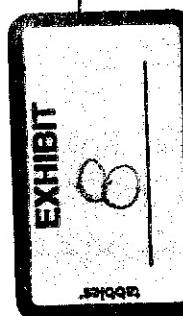
**U.S. DEPARTMENT OF LABOR
OF LABOR-MANAGEMENT STANDARDS**

REPORT OF INTERVIEW

Jon Ohmann, Director of Software Development for GetAGeek, Inc., who resides at 2527 King Arthur Drive, Monroe, NC (Tel:212/655-9581) was interviewed at his home and provided the following information.

GetAGeek, Inc. contracts with the American Arbitration Association (AAA), located in New York City to provide telephone and internet based elections for labor unions. They have been doing this for about two years, doing both officer elections and contract ratification elections for several unions, mostly involved with the airline industry. GetAGeek, Inc. built and operates the computer system that handles these elections. Ohmann does this work from his home in North Carolina. The actual computer that handles the elections is located in Seattle WA. It used to be located at GetAGeek headquarters in New York City, but after 9/11/01 they moved it to Seattle for security reasons.

The elections can be run either on the internet or on telephones, or both. They can also have as many safeguards, passwords, and other personal information as the customer wishes to have. Most require just one or two pieces of information. The APA Miami election that they recently conducted required the voters to produce an employee identification number (EIN) and a personal identification number (PIN). The EIN was a six digit number that the union provided to AAA. The AAA then contracted with a printer who produced a notice of election, and voter instructions that was mailed to all members. While the printer was producing the letters, he created the PIN and informed each member of his number. The printer then electronically gave AAA the list of PINs and they gave the information to Ohmann.



Ohmann's computer program has two separate databases. One contains each member's name, EIN and PIN. The other database contains the ballots. In GetAGeek, Inc., only Ohmann and one other person know the passwords to get into the data bases. The other person has the information, only so that he can take over if Ohmann dies or becomes otherwise disabled. When a member wishes to vote by computer, he goes to a designated web site and enters his EIN and PIN. That information is verified in the first database, and then he is given a ballot to complete. When he completes it, that information is stored in the second database. If a member comes back later to change his vote, he is again required to provide his EIN and PIN. Then he is shown his already completed ballot which he can change. A member can change his ballot as many times as he wishes, until the time of the tally. If a member chooses to vote by telephone, the same system is in effect. The only difference is that the member is lead through the process by a telephone voice prompt system. At the time of the tally, Ohmann calls up the election results and provides them to AAA. This shows how many ballots were cast and for whom. After AAA certifies the election (normally within 24 hours) Ohmann breaks the electronic link between the ballot database and the member database, and erases the member database. This permanently destroys the only record of who voted in the election, and how they voted.

Interview Date: April 16, 2003

Date Dictated/Written: April 16, 2003

Location: Monroe, NC

Date Transcribed: N/A

: Investigator Robert A. Hayes

R. Hayes

Case File: N/A

RI - Jo. n Ohmann.

April 16, 2003

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Ohmann stated that he is not sure how the election process works from the AAA perspective. He acknowledged that they receive the EIN and PIN for each member, but he does not know if they keep a copy of the information, or how they may safeguard it. If a person were to get hold of that information, he could fraudulently cast or change any number of ballots. This would probably not be detected. If he did that on a very large scale however, this activity may be noticed. If the system detects larger than expected activity, it may produce a report. Similarly, Ohmann may also notice that a larger than expected number of votes are coming from one particular place. Whenever a vote is made or changed, the computer records the IP address. This information will record the country and Internet Service Provider (for example AOL) that the person was using. The Internet Service Provider has records that will connect the IP address to an individual subscriber. The computer program also keeps record of every time a member comes into the system and what changes were made. Ohmann has never done it, but he could run a computer check to determine if the vote changes overwhelmingly favored one candidate or another. Ohmann acknowledged that all of this data is normally destroyed one day after the election when AAA certifies the election and he erases the member database.

Ohmann also acknowledged that if requested he could easily produce a record of the names of all members who voted in an election. He has never been asked to do this however. He also admitted that he could also produce a list at any time during the election process of all of the members who have voted date. He recalls only one time that he was requested to produce such a list. He frequently produces data during elections showing how many members have voted, broken down by date or location without identifying the members. In fact, he always provides AAA with a website address and a password that allows them to monitor the election while it is in progress, which shows them the election results to date. Ohmann does not know if the AAA shares the password, or the resulting information with union officers or candidates. The AAA's password does not give them access to the members' database, so they can not tell who voted in the election. Only Ohmann is able to access that information.